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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5652 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? Yes

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?

No

TAKHAJI GALABJI & ORS.

Versus

COMPETENT AUTHORITY & EX-OFFICO DY. COLLECTOR &
ORS.

Appearance:

Shri M.C. Bhatt, Advocate, with Shri P.J. Vyas,

Advocate, for the Petitioners

Shri T.H. Sompura, Asst. Govt. Pleader, for

Respondents Nos. 1 and 2

Respondent No. 3 served

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 16/04/96

ORAL JUDGEMENT

The order passed by the Competent Authority at

Ahmedabad (respondent No. 1 herein) on 21st December 1987 under sec. 8(4) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad (the appellate authority for convenience) on 30th November 1989 in Appeal No. Ahmedabad-43 of 1988 is under challenge in this petition under art. 226 of the Constitution of India. By his impugned order, respondent No. 1 declared the holding of the petitioners to be in excess of the ceiling limit by 7370 square meters.

2. The facts giving rise to this petition move in a narrow compass. The petitioners appear to be the co-owners of the subject-matter of this petition. Petitioner No. 1 filed the necessary declaration in the prescribed form under sec. 6(1) of the Act with respect to the joint holding of the petitioners within the urban agglomeration of Ahmedabad. It was duly processed by respondent No. 1. After observing necessary formalities under sec. 8 thereof, by his order passed on 21st December 1987 under sub-section (4) thereof, respondent No. 1 held the holding of the petitioners to be in excess of the ceiling limit by 7370 square meters. Its copy is at Annexure A to this petition. The aggrieved petitioners carried the matter in appeal before the appellate authority under sec. 33 of the Act. It came to be registered as Appeal No. Ahmedabad-43 of 1988. By the order passed on 30th November 1989 in the aforesaid appeal, the appellate authority dismissed it. Its copy is at Annexure B to this petition. The aggrieved petitioners have thereupon approached this Court by means of this petition under art. 226 of the Constitution of India for questioning the correctness of the order at Annexure A to this petition as affirmed in appeal by the appellate order at Annexure B to this petition.

3. It appears that the holding of the petitioners consists of two properties, one bearing Survey No. 688 admeasuring in all 10320 square meters situated in Vejalpur (the disputed land for convenience) and one house property bearing Gram Panchayat No. 384 admeasuring 50 square meters situated in Vejalpur. The total holding of the petitioners is thus found to be 10370 square meters. Out of the disputed land the N.A. permission was obtained by the petitioners with respect to 4055.08 square meters and the petitioners also got the plans approved for construction of houses therein for and on behalf of respondent No. 3 herein. It is the case of the petitioners that the balance area of the disputed land was used for agricultural purposes on the date of coming into force of the Act.

4. Learned Counsel Shri Bhatt for the petitioners has urged that, since the balance area of the disputed land was used for agricultural purposes and since there was in existence no master plan answering its definition contained in sec. 2(h) of the Act, that parcel of land should be excluded from the holding of the petitioners in view of the binding ruling of the Supreme Court in the case of Smt. Atia Mohammadi Begum v. State of U.P. and others reported in AIR 1993 Supreme Court 2465. Learned Counsel Shri Bhatt for the petitioners has further urged that the petitioners floated a scheme for the housing society in the area of land admeasuring 4055.08 square meters from the disputed land and the plans were duly approved way back in 1972 as transpiring from a copy of the plan at Annexure EE to this petition. It has been urged that the necessary construction upto the lintel level was raised in accordance with the approved plans. In that view of the matter, according to learned Counsel Shri Bhatt for the petitioners, the constructed area should be excluded from the holding of the petitioners in view of the binding ruling of the Supreme Court in the case of Smt. Meera Gupta v. State of West Bengal and others reported in AIR 1992 SC 1567. Learned Counsel Shri Bhatt for the petitioners has also referred to the fact that the construction made by the petitioners on the aforesaid area of the disputed land was assessed to property tax by the Gram Panchayat of Vejalpur and the necessary certificate from the Talati-cum-Mantri of that panchayat is at Annexure F to this petition. As against this, learned Assistant Government Pleader Shri Sompura has submitted that the aforesaid pleas were not taken before the lower authorities in specific terms and they need not be permitted to be taken up for the first time in this petition under art. 226 of the Constitution of India. Besides, according to learned Assistant Government Pleader Shri Sompura for respondents Nos. 1 and 2, it transpires from the material on record that only one house up to the lintel level was constructed by the petitioners in the land in question and the entire area cannot be excluded from the holding of the petitioners.

5. It appears from the impugned orders at Annexures A and B to this petition that the petitioners had obtained exemption under sec. 20 of the Act with respect to the balance area of the disputed land not covered by the N.A. permission. It would mean that that area of the disputed land was used for agricultural purposes. It would however be necessary to get this factual position inquired and ascertained before applying the aforesaid

binding ruling of the Supreme Court in the case of Smt. Atia Mohammadi Begum (supra).

6. It transpires from the material on record that the petitioners raised some construction up to the lintel level in that area of the disputed land covered by the N.A. permission and in respect of which the plans at Annexure EE to this petition were approved. It transpires from the certificate issued by the Talati-cum-Mantri at Annexure FF to this petition that panchayat tax was assessed to property No. 2729 raised in the area covered by the plan and the permission at Annexure EE to this petition. If a construction is amenable to house tax by a local authority, it would amount to a constructed unit for the purpose of applying the binding ruling of the Supreme Court in the case of Smt. Meera Gupta (supra).

7. It is true that in the certificate at Annexure FF to this petition only one number of the property existing on the land covered by the building permission at Annexure E and the plan at Annexure EE to this petition is mentioned. It therefore becomes difficult to know whether only one house was raised or all 20 houses in terms of the building permission at Annexure E to this petition were raised. The position in that regard is also required to be ascertained. If only one house is raised, obviously the constructed area together with the land appurtenant thereto will have to be excluded from the holding of the petitioners in view of the binding ruling of the Supreme Court in the case of Smt. Meera Gupta (supra). If more houses than one are raised in terms of the building permission at Annexure E to this petition, each house would be entitled to separate land appurtenant thereto and the area represented by the construction together with the land appurtenant thereto for each house will have to be excluded from the holding of the petitioners.

8. In view of my aforesaid discussion, I am of the opinion that the matter is required to be remanded to respondent No. 1 for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine. He will have to decide whether or not the balance area of the disputed land except that covered by the N.A. permission and the building permission at Annexure E to this petition together with the plan at Annexure EE to this petition was actually used for agricultural purposes and whether or not any master plan answering its definition contained in sec. 2(h) of the Act was in existence and in what

zone the said land was shown to be situated if the said plan was in existence. Similarly, he will also find out how many structures of the lintel level were in existence on the date of coming into force of the Act pursuant to the building permission at Annexure E to this petition and the approved plan at Annexure EE to this petition. The impugned orders at Annexures A and B to this petition will have therefore to be set aside for the purpose.

9. In the result, this petition is accepted. The order passed by the Competent Authority at Ahmedabad (respondent No. 1 herein) on 21st December 1987 at Annexure A to this petition as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad on 30th November 1989 in Appeal No. Ahmedabad-43 of 1988 at Annexure B to this petition is quashed and set aside. The matter is remanded to respondent No. 1 for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.
